

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

Interconnection between Local)
Exchange Carriers and Commercial)
Mobile Radio Service Providers)

CC Docket No. 95-185

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Federal Communications Commission
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REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating companies, hereby respectfully submits its reply to comments concerning the Petition for Waiver¹ filed by U S WEST Communications, Inc. ("U S WEST") in the above-captioned proceeding.² As explained below, contrary to the positions espoused by various commenters, operational support systems ("OSS") are not network elements subject to the unbundling requirement of Section 251(c)(3) of the

¹ U S WEST Petition for Waiver of Operation Support Systems Implementation Requirements, CC Docket No. 96-98 (filed December 11, 1996). See Public Notice DA 96-2179, released December 23, 1996).

² Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, CC Docket No. 96-98 (released August 8, 1996) ("*First Interconnection Order*"), *appeal pending*, Iowa Utilities Board v. FCC, No. 96-3321 (8th Cir. 1996).

Telecommunications Act of 1996 ("1996 Act").³ This issue is currently under appeal in the Eighth Circuit Court of Appeals. The Commission ought not prejudge the results of that appeal by its ruling in this matter. In any event, even if the Eighth Circuit determines that OSS is an element subject to the unbundling requirement, the FCC has made it clear that an incumbent local exchange carrier ("ILEC") must make available such elements to others at parity with what an ILEC provides for itself.

GTE would further note that U S WEST's Petition was filed prior to the release of the *Second Order on Reconsideration* by the Commission on December 13, 1996.⁴ To the extent U S WEST has expressed uncertainty with respect to ILEC obligations for the provision of OSS access in its Petition for Waiver, its concerns have already been fully answered in the *Second Order on Reconsideration*, where the FCC further noted that it does not intend to initiate enforcement actions against ILECs making good faith efforts to comply with this parity requirement within a reasonable time.⁵

I. OSS IS NOT A NETWORK ELEMENT

As the Commission is aware, the Eighth Circuit Court of Appeals has found that there is a substantial likelihood that significant portions of the *First Interconnection*

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 *et seq.*

⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Order on Reconsideration*, CC Docket No. 96-98 (released December 13, 1996).

⁵ *Id.* at ¶ 11.

Order will be reversed on the merits.⁶ GTE and others have challenged, among other aspects of the *First Interconnection Order*, the FCC's conclusion that OSS is a "network element" subject to the unbundling requirement of section 251(c)(3) of the 1996 Act.⁷ The legal issues related to these challenges will be definitively resolved when the case is heard and decided on its full merits. The Commission ought not prejudge the results of that appeal by its ruling in this matter.

Briefly stated, GTE has demonstrated that the FCC has impermissibly expanded the definition of "network element" under the 1996 Act to include OSS. First, the 1996 Act provides a clear, explicit definition of network elements as a physical part of a network -- a "facility or equipment" as well as the "features, functions, and capabilities" that are "provided by means of such facility or equipment."⁸ The type of equipment that qualifies as a network element is further limited by the requirement that it be "used in the provision of a telecommunications service."⁹

"Telecommunications" is defined under the Act to mean the "transmission, between or among points specified by the user, of information of the user's choosing."¹⁰ Thus, the term "network elements" refers solely to those pieces of equipment (and their

⁶ Iowa Utilities Board v. FCC, No. 96-3321, slip op. (8th Cir., October 15, 1996).

⁷ Id. at 49-53.

⁸ 47 U.S.C. at § 153(29).

⁹ Id.

¹⁰ Id. at § 153(43).

"features, functions, and capabilities") that the carrier uses to transport telephone calls from one point to another.

Moreover, OSS, by its very nature, does not fall within this statutory definition. OSS systems are essentially background software systems designed to support interaction with retail customers, and are clearly not facilities or equipment used in the routing or transmission of telephone calls. Requiring an incumbent to make these systems available to competitors has nothing to do with unbundling the pieces of the physical network that are actually used to deliver calls.

In any event, even if the Eighth Circuit determines that OSS is an element subject to the unbundling requirement, the FCC has made it clear that an ILEC must make available such elements to the extent that it is already available to the ILEC and its customers.¹¹ An ILEC is not obliged to create a new network element simply at a CLEC's request. Accordingly, there is no basis here for undermining the conclusions recently re-affirmed in the *Second Order on Reconsideration* that ILECs need not provide OSS functionalities that are unavailable to their own operations.

II. THE "PARITY" STANDARD DOES NOT REQUIRE ELECTRONIC ACCESS TO ALL OSS

In opposing U S WEST's Petition for Waiver, several commenters have suggested incorrectly that the Commission has required that ILECs provide *electronic*

¹¹ See *First Interconnection Order* at ¶¶ 244 n.520, 523.

interfaces to their OSS by January 1, 1997.¹² This assertion is wholly unfounded and lacks support in the *First Interconnection Order* and in the Act itself. As confirmed in the *Second Order on Reconsideration*, to comply with the requirements established in the *First Interconnection Order* that incumbent local exchange carriers ("ILECs") implement non-discriminatory interfaces to their Operational Support Systems ("OSS") by January 1, 1997, an ILEC must simply offer access that is on par with the OSS it has established for its own use.

The Commission has not, therefore, required that an ILEC provide electronic access to its OSS where it does not currently possess such a capacity for its own internal operations. Rather, the Commission stated that "if an incumbent uses electronic interfaces for its own internal purposes, or offers access to electronic interfaces to its customers or other carriers, the incumbent must offer at least equivalent access to requesting telecommunications carriers."¹³ Thus, where an ILEC does not utilize electronic OSS for a particular type of service, but instead processes information manually, it is required only to process a competitor's request in the same manner it would treat itself. This holding is entirely consistent with the *First Interconnection Order*, which established that ILECs must provide nondiscriminatory access to their OSS functions for pre-ordering and ordering, maintenance and repair,

¹² See ACSI Opposition at 1; see also MCI Opposition at 1. MCI incorrectly suggests that an ILEC fails to comply with its obligation to provide access to OSS unless it adheres to particular national industry standards. See id. at 4-5. The Commission has made it clear, however, that "access to OSS functions can be provided without national standards." *Second Order on Reconsideration* at ¶ 13.

¹³ *Second Order on Reconsideration* at ¶ 2.

and billing available to the ILEC itself,¹⁴ and is also consistent with each of the alternative bases offered by the Commission to support the OSS requirement.¹⁵

In fact, MCI appears to acknowledge that parity is the standard governing an ILEC's obligations to provide access to its OSS in its Opposition. According to MCI, the Commission requires an ILEC, in providing access to its OSS related to design services, to "eliminat[e] human intervention where [it] provisions electronically."¹⁶ GTE agrees that, where an ILEC processes orders or requests for design services manually, it is under no obligation to create an electronic system to process such orders or requests from an interconnecting carrier.

As explained by U S WEST, design services by their very nature require manual processing, thereby making electronic OSS difficult or impossible.¹⁷ Design services are those services that require special engineering to ensure that appropriate transmission or signaling conditioning, or other required components, have been defined to meet the technical requirements of the ordered service. To the extent that an

¹⁴ *First Interconnection Order* at ¶¶ 516-528.

¹⁵ The Commission found that, as a network element subject to the unbundling requirement of section 251(c)(3) of the Telecommunications Act of 1996, OSS must be made available only to the extent it is already available to the ILEC and its customers, absent agreement by the requesting carrier to pay the system upgrade costs. *See First Interconnection Order* at ¶ 244 n.520, 516, 523. Alternatively, if access is considered an essential component of an ILEC's duty to offer access to network elements and resale on a nondiscriminatory basis, the Commission requires only access that is "at least equal-in-quality" to what the ILEC provides itself. *See First Interconnection Order* at ¶¶ 312, 316, 517; *see also Second Order on Reconsideration* at ¶ 9.

¹⁶ MCI Opposition at 8.

¹⁷ *See* U S WEST Petition at 2 n.3, 6.

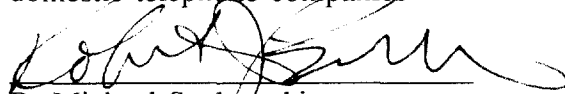
ILEC performs set-up and support functions for design services manually, it is in compliance with the new OSS access requirements if it provides these same functions on a manual basis on behalf of requesting carriers. It follows that an ILEC's inability to offer electronic OSS for such services would not violate the OSS access requirement and would not necessitate a waiver.

CONCLUSION

For the foregoing reasons, GTE urges the Commission, in reaching a decision on U S WEST's Petition for Waiver, to do nothing that would prejudice the pending appeal of the *First Interconnection Order* or to disturb the finding in the *Second Order on Reconsideration* that ILEC compliance with the agency's OSS requirements will be measured against a parity standard defined as the equivalent of the OSS functionality an ILEC provides to itself.

Respectfully submitted,

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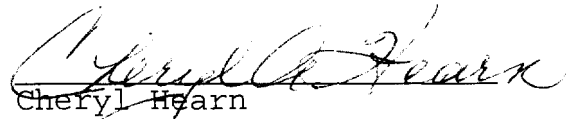
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